

**UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
SEVENTH REGION**

**HCR MANORCARE d/b/a HEARTLAND
HEALTH CARE CENTER-FOSTRIAN¹**

Employer

and

Case 7-RC-22873

**MICHIGAN COUNCIL 25, AMERICAN
FEDERATION OF STATE, COUNTY, AND
MUNICIPAL EMPLOYEES (AFSCME), AFL-CIO**

Petitioner

APPEARANCES:

Clifford H. Nelson, Attorney, of Atlanta, Georgia, for the Employer.
Eric I. Frankie, Attorney, of Detroit, Michigan, for the Petitioner.

DECISION AND DIRECTION OF ELECTION

Upon a petition duly filed under Section 9(c) of the National Labor Relations Act, as amended, a hearing was held before a hearing officer of the National Labor Relations Board, hereinafter referred to as the Board.

Pursuant to the provisions of Section 3(b) of the Act, the Board has delegated its authority in this proceeding to the undersigned.

Upon the entire record² in this proceeding, the undersigned finds:

¹ The name of the Employer appears as amended at the hearing.

² The Employer and Petitioner filed briefs which have been carefully considered.

1. The hearing officer's rulings are free from prejudicial error and are hereby affirmed.³

2. The Employer is engaged in commerce within the meaning of the Act, and it will effectuate the purposes of the Act to assert jurisdiction herein.

3. The labor organization involved claims to represent certain employees of the Employer.

4. A question affecting commerce exists concerning the representation of certain employees of the Employer within the meaning of Section 9(c)(1) and Sections 2(6) and (7) of the Act.

Overview

The Employer operates two facilities located in Flushing, Michigan: a skilled nursing facility known as Heartland Health Care Center-Fostrian, and an adjacent assisted living facility known as Fostrian Court. The Petitioner seeks an election among a unit of all full-time and regular part-time certified nurses' assistants, cooks, dietary aides, facility caretakers,⁴ housekeeping employees, laundry employees, maintenance personnel, medical recordkeepers, medical records clerks, and admissions employees, but excluding managers, the accounts payable clerk/receptionist, accounts payable and receivable payroll clerk, licensed social workers, guards and supervisors⁵ as defined in the Act, and all other

³ The hearing officer properly granted Petitioner's petition to revoke the Employer's subpoenas ad testificandum and duces tecum served on Petitioner's Administrative Director James Neblett to testify and produce documents. When asked to state the basis for the subpoenas, the Employer cited a potential conflict between supervisors within Petitioner and employees of the Employer. Asked for specifics, the Employer stated that it believed its cooks and scheduler, whom it contends are supervisors, are members of Petitioner and would have a conflict of interest with the Employer's employees who would be represented by Petitioner. The Employer did not attempt to call any of its cooks or its scheduler who could have testified as to their involvement in Petitioner. Thus, the Employer's reliance on *Sierra Vista Hospital*, 241 NLRB 631 (1979), is misplaced as it had an opportunity to adduce evidence it had in support of its theory. Additionally, based on my findings herein that the Employer has not met its burden that cooks and the scheduler are supervisors within the meaning of the Act, the relevance of the subpoenaed information is moot. For the same reasons, I also deny the Employer's post-hearing Motion For Reconsideration of Subpoena Issue And To Reopen Record.

⁴ The record reflects that this classification is resident caregiver, a position existing only at the Fostrian Court assisted living facility.

⁵ The parties stipulate, and I find, that the following named managers are excluded supervisors within the meaning of the Act: Jeffrey Wangness (interim Fostrian Administrator); Patty Johns (Fostrian Court Administrator); Jean Holmquest (Fostrian Director of Nursing); Susan Tomalia (Fostrian Court Head Nurse / Director of Nursing); Terisanne Previtt (Fostrian Activities Director); Jerry Lynn Anderson (Fostrian Court Activities Director); Shannon Stover (Fostrian Director of Dietary); Kris Hurd (Fostrian Dietary Manager); Pam Moore (Director of Housekeeping, both facilities); Mona Butler (Director of Laundry, both facilities); Mark Gosley (Director of

employees. There is no history of collective bargaining regarding any of the involved employees.

The Employer would not stipulate to the labor organization status of Petitioner. It would not do so for two reasons: 1) the potential conflict of interest discussed in footnote 3, above; and 2) Petitioner's constitution precludes it from representing private sector employees without a specific waiver. Thus, it argues that the petition should be dismissed. Petitioner asserts it is a labor organization and not precluded from representing the Employer's employees.

The Employer, contrary to the Petitioner, also contends that its cooks are supervisors within the meaning of Section 2(11) of the Act and should be excluded from the appropriate unit. The Employer further contends that certain of its dietary aides regularly function as relief cooks, and are also supervisors. Finally, the Employer agrees that the classification of medical records clerk is appropriately included in the petitioned-for unit, but challenges the eligibility of clerk Ray Shell Anderson on the basis that she is a scheduler, who should be excluded as a supervisor. Petitioner contends Anderson is a medical records clerk and not a supervisor. Otherwise, the Employer does not dispute the appropriateness of the unit sought by Petitioner.

I find that the Petitioner is a labor organization within the meaning of Section 2(5) of the Act, and not precluded from representing the Employer's employees because of a conflict of interest or constitutional restrictions. I further find that, except for Fostrian Court Dietary Manager/relief cook Susan Smith, the Employer has not met its burden of proof that the cooks, relief cooks, and scheduler are statutory supervisors within the meaning of Section 2(11) of the Act.

Labor Organization

The Petitioner adduced testimony that employees participate in its affairs and that it exists at least in part for the purpose of dealing with employers concerning employees' working conditions. As already discussed, the Employer's supervisory conflict of interest argument concerns its assertion that some of its cooks and a scheduler may be members of Petitioner, resulting in a conflict of interest with the Employer's employees whom the Petitioner seeks to represent. The Employer did not name or attempt to call any of the asserted supervisors as witnesses to testify on this issue. As to the Employer's argument regarding Petitioner's constitution, AFSCME's International constitution does contain

Admissions); Jim Cummings (Director of Maintenance, both facilities); and Cindy Ganson (Director of Human Resources). This stipulation is embodied in a written, post-hearing stipulation marked and received as Board Exhibit 2.

restrictive language regarding representation of private sector employees. However, the record established that Petitioner had authorization from the international union to organize the Employer's employees.

The Employer's Operations

The Employer's facilities consists of a 118 resident, skilled nursing facility known as Fostrian (Center) providing skilled nursing care, and a 45 to 48 resident, assisted living facility known as Fostrian Court, providing assisted living services. Both facilities share a common address of 540 Sunnyside Drive, Flushing, Michigan. Each facility has its own administrator who reports to off-site corporate officials. Reporting to the administrators are directors of various departments. Each facility has a director of nursing and director of activities. They share directors of human resources, admissions, housekeeping, maintenance, and laundry.⁶ There are about 150 employees working at both facilities. The record is incomplete as to the numbers of employees working in each petitioned-for classification, but reveals about 4 cooks, 12 dietary aides, 30-40 certified nursing assistants, 8-10 resident caregivers, 8 housekeepers, 5 laundry employees, 2 medical records clerks, 1 maintenance assistant, and 1 admissions coordinator. Employees generally do not interchange between locations.

Cooks and Relief Cooks

Cooks and dietary aides, some of whom also serve as relief cooks, as needed, are within the dietary department. Shannon Stover is the director of dietary at Fostrian, the skilled nursing facility. She also acts as a consultant to Fostrian Court, where there is no director. Three or four days a week, Stover visits the Fostrian Court facility for brief periods to observe the operations and answer any questions. Stover works Monday through Friday, usually from 6:00 a.m. to 4:00 p.m. Dietary Manager Kris Hurd reports to Stover and supervises the cooks and dietary aides at Fostrian. She works until 5:00 p.m. or 5:30 p.m. Hurd orders food, takes inventory, creates the work schedule for the cooks and dietary aides, and has the authority to discipline departmental employees. Hurd checks on the operations at Fostrian Court on a daily basis. Each facility has its own kitchen and pantry. There is some interaction between cooks and supervisors at both facilities to obtain food items if one kitchen is out of stock. Cooks and dietary aides are interviewed by the director of dietary and dietary manager, who also make the decision to hire in consultation with human resources. The cooks have no involvement in the hiring of dietary aides.

⁶ The record does not disclose to which administrator the latter five directors report. The Dietary department is discussed below.

The full-time cooks are Margaret Londragin and Amecia Kirkland at Fostrian, and Myron Causey and Rhonda Johnson at Fostrian Court. The dietary department is open from 5:30 a.m. until 8:00 p.m. Londragin usually works days from 5:30 a.m. to 2:30 p.m., and Kirkland generally works afternoons from 11:30 a.m. to 7:30 p.m. They work 40 hours a week, including some weekends. On weekends and during the week for one-half hour in the morning and after 5:00 or 5:30 p.m., when Hurd leaves, the only dietary department employees at the facilities are a cook and dietary aide. As the facilities are seven-day-a-week operations, and a cook may sometimes be absent, certain dietary aides serve as relief cooks. Latressa Wilson, Kelly Wilson, and Wanda Fay are relief cooks at Fostrian. Susan Smith is the only relief cook at Fostrian Court. In the four months prior to the hearing, Latressa Wilson regularly served as a relief cook two to three days a week. Fay and Kelly Wilson began serving as relief cooks only a month or two before the hearing and do so less frequently than Latressa Wilson. When working as a relief cook, these employees perform the same duties as a cook. Cooks spend most of their work time preparing meals for the residents. The duties and authorities of cooks are the same at both facilities. Cooks may ask dietary aides to assist them in performing food preparation tasks. When assisting, dietary aides are subject to the direction of the cook. Generally, one cook and two dietary aides work together to prepare a meal. If a dietary aide refuses to assist the cook, the cook informs the dietary manager who has authority to discipline.

Stover indicated that when she, Hurd and the administrators are absent from the facilities, she considers the cooks to be in charge of the dietary department and the supervisors of the dietary aides. However, no details regarding how often this occurs or any enhanced authority by cooks during such periods was adduced. The Employer introduced no supporting documentary evidence for this ostensible authority. Stover admitted that cooks and dietary aides have job descriptions, but those documents were not submitted into the record. The dietary policies and procedures handbook also provides no guidelines as to assignment of responsibilities within the department.

Stover testified that cooks call in replacement dietary aides, authorize dietary aides to leave early upon request or low census, approve their working later, regulate their break times, and fill in as dietary manager.

If a dietary aide calls off work before 6:00 a.m., prior to Stover's arrival, the cook telephones other dietary aides, seeking a replacement by asking if an aide would like to work her day off. The cook follows a procedure of first calling part-time dietary aides by seniority, and then going down a list and calling unscheduled full-time aides. Cooks have no authority to direct an aide to report to work on an unscheduled day. When another aide is located, the cook notifies Hurd. If an aide fails to show up for work as scheduled, the cook

directs the one dietary aide to cover both positions while the cook calls for a replacement. If a replacement aide cannot be found, the dietary aide must do the work of the two.

The Employer indicated that as long as certain unspecified facility staffing guidelines are met, a cook may allow a dietary aide to leave work early, e.g., for reasons of family emergency. However, no instances were known where an aide was ever denied such early departure, and such a departure results in assessment of points under the Employer's absenteeism policy. Normally, a decision to send an aide home, including reasons of low resident census, is made by the director of dietary or dietary manager. Decisions regarding low resident census are based on facility guidelines. The cooks apparently also may approve a dietary aide to work later, if necessary, although no specific examples were offered. Cooks sometimes try to regulate when a dietary aide takes a break by suggesting the best time for taking the break based on the stages of the food preparation process. However, they have no authority to compel that the break be taken according to their suggestion, or to direct an aide to return to work before completion of their break.

Cooks report incidents to the dietary manager, but do not have the authority to issue discipline. Once, according to Stover, on a weekend when Stover and Hurd were not in the Fostrian facility, relief cook Latressa Wilson, on her own, sent home a dietary aide who admitted to a hangover and had placed wrong items on patient trays. This incident was not considered discipline. Wilson reported the matter to Hurd. Employer policy provides that Hurd investigates such incidents to get both sides of the story. If there is some matter requiring immediate discipline at times when the dietary manager is not in the facility, the cook will telephone the dietary manager.

During an unidentified prior period of about four months when there was no dietary manager, Latressa Wilson filled in at that position. The Employer again intends to ask her to do so when Dietary Director Stover takes anticipated pregnancy leave in October 2005 and Dietary Manager Hurd becomes the acting director. Cooks have keys to the refrigerator and pantry. They do not attend management meetings.

At Fostrian Court, there is no director of dietary. Dietary aide/relief cook Susan Smith serves as the dietary manager every Thursday.⁷ She wears the same white uniform that cooks wear. Stover and Hurd spend only brief periods of time at Fostrian Court during the workday. Smith attends joint management meetings at Fostrian. When serving as dietary manager at Fostrian Court on Thursdays, Smith performs substantially the same functions as Hurd at Fostrian. She schedules and supervises the cooks and dietary aides. She has issued

⁷ The record does not disclose why Smith serves in that position on that day, and indicates that there is no dietary manager on other days of the week.

an unspecified discipline to a cook on one occasion. The record does not disclose whether the discipline affected the employee's tenure or job status. Cooks report to Smith and even when she is not working as the dietary manager, the Employer indicated that Smith retains the authority at Fostrian Court to discipline dietary department employees.

Scheduler

Ray Shell Anderson works Monday through Friday, 8:00 a.m. to 4:30 p.m. She reports to the director of nursing at Fostrian Court, Jean Holmquest. There are no other employees in her department. Anderson schedules the nurses and nurses' aides at Fostrian Court. The schedule determines who will be working on what days. In completing the schedule, Anderson follows the Employer's staffing budget and state staffing guidelines as to the numbers of nurses and nurses' aides who must be working in relation to the resident census. Otherwise, the record does not disclose how Anderson devises the schedule. Anderson takes "call-ins" from employees and, if necessary to meet staffing guidelines, calls others to find a replacement. Regarding the latter, she may simply assign a nursing assistant from another unit. The record does not otherwise indicate the procedure used for calling in replacements. The Employer indicated that in the course of performing her scheduling duties, Anderson gains access to certain unidentified confidential information regarding why certain employees may not be available for scheduling. There is no evidence or contention, however, that she has a confidential relationship to a managerial employee regarding matters of labor relations.

Analysis

Labor Organization Status of Petitioner and Disqualifying Conflict of Interest

The record evidence establishes that Petitioner meets the statutory requirements of Section 2(5) for a labor organization. It is an organization in which employees participate and which exists for the purpose of dealing with employers concerning grievances, labor disputes, wages and other conditions of work. Section 9(c)(1)(A) of the Act further provides that employees may be represented by "any...labor organization." There is no statutory prohibition regarding representation of private sector employees by a union that chiefly represents public sector employees.

The Employer adduced no evidence of any presence or participation of its asserted supervisors in the internal affairs of the Petitioner. Further, as found *infra*, cooks, relief cooks and scheduler, the classifications containing the individuals assertedly creating the conflict of interest, are not supervisors. Thus, the Employer failed to meet, or persuade that it could meet, the "heavy burden" imposed by the Board on an employer of proving that

supervisory participation in a labor organization's affairs would present a requisite "clear and present danger" of interference with the collective bargaining processes. *Sierra Vista Hospital*, 241 NLRB 631, 633 (1979); *CMT, Inc.*, 333 NLRB 1307 (2001).

While the international constitution of AFSCME contains restrictive language regarding representation of private sector employees, the record establishes that Petitioner had authorization from the international union to organize the Employer's employees. Further, I take administrative notice from prior elections conducted, and certifications issued, by this Region that Petitioner represents employees of numerous private sector employers in the metropolitan Detroit area. Thus, this case is distinguished from *United Trucks & Bus Service Co.*, 257 NLRB 343 (1982), relied upon by the Employer. In that case, the union represented only public employees. Therefore, it did not satisfy either of the two criteria for labor organization status under Section 2 (5) of the Act. Employees, as defined in the Act, did not participate in it, and it did not deal with employers, as defined in the Act. *Id.*

Thus, I find that Petitioner is a labor organization and not precluded from representing the Employer's employees.

Supervisory Status of Cooks, Relief Cooks and Scheduler

Section 2(11) of the Act defines the term "supervisor" as follows:

. . . any individual having authority, in the interest of the employer, to hire, transfer, suspend, lay off, recall, promote, discharge, assign, reward, or discipline other employees, or responsibly to direct them, or to adjust their grievances, or effectively to recommend such action, if in connection with the foregoing the exercise of such authority is not of a merely routine or clerical nature, but requires the use of independent judgment.

An employee need possess only one of the above-enumerated authorities in order to come within the definition, as long as said individual exercises such authority and does so in the interest of the employer, using independent judgment. *Phelps Community Medical Center*, 295 NLRB 486, 489 (1989); *Cannon Industries, Inc.*, 291 NLRB 632, 636 (1988); *Frederick's Foodland, Inc.*, 247 NLRB 284, 290-91 (1980). The existence of secondary indicia, such as one's job title or attendance at management meetings, standing alone, without investment of statutory authority, is insufficient to confer supervisory status. *Shen Automotive Dealership Group*, 321 NLRB 586, 594 (1996).

The legislative history of Section 2(11) indicates that Congress intended to distinguish between employees commonly referred to as “straw bosses” or leaders, who may give minor orders and oversee the work of others, but who are not necessarily perceived as part of management from those supervisors truly vested with genuine management prerogatives. *George C. Foss Co.*, 270 NLRB 232, 234 (1984). The Board and courts are mindful not to interpret the term supervisor too broadly so as to deprive employees of their rights under Section 7. See *Unifirst Corp.*, 335 NLRB 706, 712-13 (2001); *Azusa Ranch Market*, 321 NLRB 811, 812 (1996); *Williamson Piggly Wiggly v. NLRB*, 827 F.2d 1098, 1100 (6th Cir. 1987). Thus, the exercise of some supervisory authority in a merely clerical, perfunctory or sporadic manner does not require a finding that an employee is a supervisor within the meaning of the Act. *Somerset Welding & Steel, Inc.*, 291 NLRB 913 (1988). Finally, it is well established that the burden of establishing supervisory status rests on the party asserting that such status exists. *NLRB v. Kentucky River Community Care, Inc.*, 532 U.S. 706, 710-712 (2001); *Northcrest Nursing Home*, 313 NLRB 491, 496 fn. 26 (1993); *Clark Machine Corp.* 308 NLRB 555 (1992).

Cooks and Relief Cooks

In support of its contention that cooks and relief cooks are supervisors within the meaning of the Act, the Employer argues that cooks call in dietary aides and implicitly authorize overtime to meet staffing levels, authorize them to leave early upon request or low resident census, assign them food preparation duties, regulate their break times, send them home when they violate rules or jeopardize patients, and fill in as dietary manager during any periods of extended absence.

There is no evidence that cooks or relief cooks have statutory authority to hire, discharge, suspend, promote, reward, adjust grievances, lay off or recall employees, that they have authority to make such recommendations, or that any recommendations offered have been effective.

The dietary manager schedules cooks and dietary aides. Any scheduling of a dietary aide and incidental resulting overtime occasioned by a cook calling aides in the early morning at a time when no other appropriate official is present at the facility, or seeking volunteers to replace a no-show necessary to meet staffing ratios to keep the facility operating optimally and in compliance with the law, is accomplished by following routine procedures. It does not entail the exercise of any enumerated statutory authority. *Youville Health Care Center, Inc.*, 326 NLRB 495, 496 (1998). Further, the cook has no authority to direct an aide to report to work on a day off. The approval by a cook of an early departure of an aide for emergency or low resident census pursuant to facility guidelines, does not entail exercise of supervisory authority, especially where such voluntary departure results in

attendance points, and there are no known instances when a cook denied a requested early departure. *Wilshire at Lakewood*, 343 NLRB No. 23, slip op at 3 (Sept. 30, 2004). The cooks limited regulation of dietary aides' break time also does not establish supervisory authority. *Garage Management Corp.*, 334 NLRB 940, 950 (2001); *Injected Rubber Products Corp.*, 258 NLRB 687, 691 (1981).

Cooks spend most of their work day preparing meals for residents. The job of a dietary aide is routine and includes assisting the cook upon request in preparing meals for residents. Any assignment and direction by a cook to the aide is merely incidental to their expected assistance to the cook in the food preparation process. While a cook may provide general work direction to the aides, this direction is routine and incidental to the food preparation process. The Board has determined that the exercise of such limited authority over lesser skilled employees regarding assignment or direction does not entail the independent judgment necessary to establish supervisory status. *Brown & Root, Inc.*, 314 NLRB 19, 22 (1994); *J. C. Brock Corp.*, 314 NLRB 157 (1994); *Clark Machine Corp.*, *supra*.

Cooks and relief cooks do not have any role in disciplining employees beyond merely reporting facts to the dietary manager, who issues any discipline within the department. Such factual reporting without recommendation which does not alone affect job status or tenure does not demonstrate supervisory authority. *Ohio Masonic Home*, 295 NLRB 390, 394 (1989). The one time that a relief cook sent home a dietary aide whose condition and conduct potentially endangered resident care represented an expected intervention consistent with state guidelines regarding immediate jeopardy, and was not considered to be discipline by the Employer. *Vencor Hospital-Los Angeles*, 328 NLRB 1136, 1139 (1999); *Phelps Community Center*, 295 NLRB 486, 492 (1989); *Loffland Bros. Co.*, 243 NLRB 74, 75 fn.4 (1979).

That cooks are the highest ranking employees on site when the director of dietary and dietary manager are not present does not make them supervisors. *Training School at Vineland*, 332 NLRB 1412 (2000); *Northcrest Nursing Home*, *supra* at 499. Further, while relief cook Latressa Wilson filled in for the dietary manager one time in the past and is anticipated to do so again, such substitution is too sporadic and infrequent to make her a supervisor excluded from the unit. *Latas Alumino Reynolds, Inc.*, 276 NLRB 1313 (1985).

Finally, as two aides typically work with one cook, if cooks were supervisors, the ratio of supervisors to employees in the dietary department at Fostrian would be an unlikely 3:2 at times when the director of dietary and dietary manager are both present in the facility and a still rather disproportionate 1:2 for those hours when the director and manager are

absent. These unrealistic ratios would be similar at Fostrian Court. *Northcrest Nursing Home*, supra at 498; *United States Gypsum Co.*, 178 NLRB 85, 86 fn.2 (1969).

Although the record is desultory as to differences regarding the dietary department at Fostrian Court, and it is unknown why Smith assumes the mantle of authority of the Fostrian Court dietary manager only once a week on Thursdays,⁸ it is undisputed that every Thursday she is the dietary manager at Fostrian Court. In that position, she possesses and exercises the same authorities as Fostrian Dietary Manager Hurd. Smith assertedly retains this authority over Fostrian Court dietary employees when working as a relief cook on other days of the week. Specifically, Smith has the authority to issue discipline, which she has exercised on one occasion. Also, Smith schedules cooks and dietary aides at Fostrian Court and, unlike other cooks, attends joint management meetings as the dietary representative for Fostrian Court. Given the sporadic contact of Stover and Hurd with Fostrian Court, but for Smith there would be little supervisory presence. Smith spends at least 20% of her worktime as dietary manager. In that capacity, she has the same authority as Dietary Manager Hurd, who was stipulated, and found, to be a supervisor. Employees who spend a regular and substantial portion of their working time performing supervisory tasks are supervisors. *Aladdin Hotel*, 270 NLRB 838 (1984); *Honda of San Diego*, 254 NLRB 1248 (1981) (25% of the time as a supervisor); *Swiff and Co.*, 129 NLRB 1391 (1961) (15% of the time as a supervisor).⁹

Accordingly, I find that Smith possesses and has exercised supervisory statutory indicia within Section 2(11) of the Act and is excluded from the unit. As to the cooks and relief cooks at Fostrian and the cooks at Fostrian Court, the record is clear that the Employer has not met its burden of proof that they are supervisors.

Accordingly, with the exception of Susan Smith, I conclude that the cooks and relief cooks are not supervisors within the meaning of Section 2(11) of the Act.

Scheduler

Ray Shell Anderson supervises no employees. Rather, the record evidence merely establishes that she schedules nurses and nurses' aides, based on state staffing guidelines, budget and resident census. No further details were provided. The record is insufficient to establish that she exercises supervisory independent judgment in scheduling employees. *Third Coast Emergency Physicians, P.A.*, 330 NLRB 756, 760 (2000). The Employer has

⁸ The record hints that it may be related to Smith's food ordering duties.

⁹ While these cases involved employees who substituted as supervisors, the principle is the same.

thus failed to meet its burden of proof that Anderson is a supervisor within the meaning of the Act. Accordingly, Anderson is included in the unit as a medical records clerk.

Conclusion

For the reasons explicated above, and based on the entire record and the stipulation of the parties, I find that the following employees constitute an appropriate unit of employees for the purposes of collective bargaining within the meaning of Section 9(b) of the Act:

All full-time and regular part-time certified nurses' assistants, cooks, dietary aides, resident caregivers, housekeeping employees, laundry employees, maintenance personnel, medical recordkeepers, medical records clerks, and admissions employees, employed by the Employer at 540 Sunnyside Drive, Flushing, MI, but excluding managers, the accounts payable clerk/receptionist, accounts payable and receivable payroll clerk, licensed social workers, guards and supervisors as defined in the Act, and all other employees.

Those eligible to vote shall vote as set forth above and in the attached Direction of Election.

Dated at Detroit, Michigan, this 23rd day of June, 2005.

(SEAL)

"/s/[Stephen M. Glasser]."

/s/ Stephen M. Glasser

Stephen M. Glasser, Regional Director

National Labor Relations Board

Seventh Region

Patrick V. McNamara Federal Building

477 Michigan Avenue - Room 300

Detroit, Michigan 48226

DIRECTION OF ELECTION

An election by secret ballot shall be conducted under the direction and supervision of this office among the employees in the unit(s) found appropriate at the time and place set forth in the notice of election to be issued subsequently, subject to the Board's Rules and Regulations. Eligible to vote are those employees in the unit(s) who were employed during the payroll period ending immediately preceding the date of this Decision, including employees who did not work during that period because they were ill, on vacation, or temporarily laid off. Employees engaged in an economic strike, who have

retained their status as strikers and who have not been permanently replaced are also eligible to vote. In addition, in an economic strike which commenced less than 12 months before the election date, employees engaged in such a strike who have retained their status as strikers but who have been permanently replaced, as well as their replacements, are eligible to vote. Employees who are otherwise eligible but who are in the military service of the United States may vote if they appear in person at the polls. Ineligible to vote are 1) employees who quit or are discharged for cause after the designated payroll period for eligibility, 2) employees engaged in a strike, who have quit or been discharged for cause since the commencement thereof and who have not been rehired or reinstated before the election date, and 3) employees engaged in an economic strike which commenced more than 12 months before the election date and who have been permanently replaced. Those eligible shall vote whether or not they desire to be represented for collective bargaining purposes by:

**MICHIGAN COUNCIL 25, AMERICAN FEDERATION OF STATE, COUNTY,
AND MUNICIPAL EMPLOYEES (AFSCME), AFL-CIO**

LIST OF VOTERS

In order to ensure that all eligible voters may have the opportunity to be informed of the issues in the exercise of their statutory right to vote, all parties to the election should have access to a list of voters and their addresses which may be used to communicate with them. *Excelsior Underwear, Inc.*, 156 NLRB 1236 (1966); *NLRB v. Wyman-Gordon Company*, 394 U.S. 759 (1969); *North Macon Health Care Facility*, 315 NLRB 359 (1994). Accordingly, it is hereby directed that **within 7 days** of the date of this Decision, **2** copies of an election eligibility list, containing the full names and addresses of all the eligible voters, shall be filed by the Employer with the undersigned who shall make the list available to all parties to the election. The list must be of sufficient clarity to be clearly legible. The list may be submitted by facsimile or E-mail transmission, in which case only one copy need be submitted. In order to be timely filed, such list must be received in the **DETROIT REGIONAL OFFICE** on or before **June 30, 2005**. No extension of time to file this list shall be granted except in extraordinary circumstances, nor shall the filing of a request for review operate to stay the requirement here imposed.

RIGHT TO REQUEST REVIEW

Under the provisions of Section 102.67 of the Board's Rules and Regulations, a request for review of this Decision may be filed with the National Labor Relations Board, addressed to the **Executive Secretary, Franklin Court, 1099 14th Street N.W.**,

Washington D.C. 20570. This request must be received by the Board in Washington by **July 7, 2005.**

POSTING OF ELECTION NOTICES

a. Employers shall post copies of the Board's official Notice of Election in conspicuous places at least 3 full working days prior to 12:01 a.m. of the day of the election. In elections involving mail ballots, the election shall be deemed to have commenced the day the ballots are deposited by the Regional Office in the mail. In all cases, the notices shall remain posted until the end of the election.

b. The term "working day" shall mean an entire 24-hour period excluding Saturday, Sundays, and holidays.

c. A party shall be estopped from objecting to nonposting of notices if it is responsible for the nonposting. An employer shall be conclusively deemed to have received copies of the election notice for posting unless it notifies the Regional Office at least 5 days prior to the commencement of the election that it has not received copies of the election notice. */

d. Failure to post the election notices as required herein shall be grounds for setting aside the election whenever proper and timely objections are filed under the provisions of Section 102.69(a).

*/ Section 103.20 (c) of the Board's Rules is interpreted as requiring an employer to notify the Regional Office at least 5 full working days prior to 12:01 a.m. of the day of the election that it has not received copies of the election notice.